IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

INSOLVENCY PETITION NO.93 OF 2003

M/s.Blaze Bearing (India) Pvt.Ltd. ...Petg. Creditor.
Versus
Mahendra Kapoor & Ors. ...Debtors.
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Mr.M. S. Udeshi for the Petitioning Creditor.
Mr. J. Narula for Debtor Nos.1 and 2.
Ms. K.A. Shah for Debtor Nos.3 and 4.
Mr.K. B. Adyanthaya for Respondent No.3.
Mr. Y. C. Parikh, Official Assignee present.
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CORAM : DR.D.Y.CHANDRACHUD, J.

November 7, 2006.

P.C.

The Petition has been instituted on the ground that there has been a suspension of payments under Section 9(1)(g) of the Presidency Towns Insolvency Act, 1909.

By virtue of Section 9(1)(g), a debtor commits an act of insolvency if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. The contention of the Petitioning Creditor is that between 4th May 2000 and 17th March 2001, 72 bills were issued in respect of goods

sold, supplied and delivered; that a notice of demand was issued on 1st July 2003 and that whereas three cheques that were issued on behalf of the partnership firm were honoured, one cheque in the amount of Rs.65,000/- was dishonoured in October 2001. The Insolvency Petition was filed on 26th September 2003.

The question that arises is as to whether these facts are sufficient to sustain and inference that the debtors have given notice to their creditors or any of them of having suspended the payment of their debts. Now it is common ground between the parties that that Petitioning Creditor has already instituted a Summary Suit on the Original Side of this Court (Suit 1994 of 2006) in which a Summons for Judgment has been taken out and to which the debtors have filed their reply. The Summons for Judgment is pending consideration in this Court. In the affidavit in reply that has been filed by Debtor No.2, the defence that has been set up is that after the inspection of invoices was furnished, it was revealed that most of the invoices were unsigned and the supporting delivery challans also did not show the receipt of goods by the Partnership firm. It has been averred that the compilation of invoices and delivery challans would show that goods supplied

to one Sharda Synthetic Limited as well as Ansa Print Pack Pvt. Ltd. were also added to the list of delivery challans supplied to the partnership firm in question. The defence is that neither the Debtors nor the partnership firm had any connection with Sharda Synthetic Limited or Ansa Print Pack Pvt. Ltd. It has also been averred that as against the goods sent, the partnership firm had duly effected payments between April and October 2001 totaling to Rs.4,32,752/- Exhibit '1' to the affidavit in reply contains a list of payments made by the Debtors in the amount of Rs. 1.32 crores to diverse creditors including an amount of Rs.75 lakhs that was realised by the Abhyudaya Co-operative Bank Ltd.

In the circumstances of this case, it is not possible to hold that there has been a suspension of payments within the meaning of Section 9(1)(g) of the Presidency Towns Insolvency Act, 1909. The Debtors have filed a reply to the Summary Suit setting out a defence to the claim. The tenability of the defence will arise before the appropriate Court where the Summons for Judgment is taken up. That apart, it has also to be noted that under Section 12, a creditor is not entitled to present an Insolvency Petition against a Debtor unless the act of insolvency on which the petition is

grounded has occurred within three months before the presentation of the petition. The Petition was instituted on 26th September 2003. Counsel appearing on behalf of the Petitioning Creditor has stated that the cheque was dishonoured in July 2001. No case for the exercise of the jurisdiction of the Court in insolvency is made out since, particularly, no case warranting an interference of suspension of payments has been established. The petition shall accordingly stand dismissed.

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